Sia Kwee Hin v Jabatan Agama Islam Wilayah Persekutuan

FEDERAL COURT (KUALA LUMPUR) — SUPREME COURT CIVIL APPEAL NO 01-62 OF 1993
EUSOFF CHIN CHIEF JUSTICE, LAMIN PCA AND MOHAMED DZAIDDIN FCJ
5 MARCH 1999

Islamic Law *— Apostasy — Renunciation of Islam — Application to High Court for declaration that appellant no longer a Muslim — Appeal against decision of High Court in dismissing application — Whether Jabatan Agama Islam Wilayah Persekutuan a proper party to the appeal — Islamic Family Law (Federal Territory) Act 1984 — Administration of Muslim Law Enactment 1953 (Selangor) ss 6 & 7*

Words and Phrases *— 'Majlis' — Islamic Family Law (Federal Territory) Act 1984 — Administration of Muslim Law Enactment 1953 (Selangor) ss 6 & 7*

This appeal involved the issue whether the High Court had jurisdiction to hear the appellant's application for a declaration that he was no longer a Muslim. At the outset of the appeal, the senior federal counsel raised a preliminary objection that the respondent was not a proper party to the appeal. The senior federal counsel submitted that under the Islamic Family Law (Federal Territory) Act 1984 ('the Act'), the proper party should be the Majlis Agama Islam Wilayah Persekutuan.

Held, upholding the preliminary objection:

The word 'Majlis' under the Act refers to the Majlis Agama Islam Wilayah Persekutuan by virtue of s 5 of the Selangor Administration of Muslim Law Enactment 1952. Therefore, the preliminary objection was allowed (see pp 505H–I and 506A–B).

[Bahasa Malaysia summary

Rayuan ini melibatkan isu sama ada Mahkamah Tinggi mempunyai bidang kuasa untuk mendengar permohonan perayu untuk satu perisytiharan bahawa ia tidak lagi merupakan seorang penganut Islam. Di permulaan rayuan, peguam kanan persekutuan membangkitkan bantahan permulaan bahawa penentang bukanlah suatu pihak yang wajar kepada rayuan tersebut. Peguam kanan persekutuan berhujah bahawa di bawah Akta Undang-Undang Keluarga Islam (Wilayah Persekutuan) 1984 ('Akta tersebut'), pihak yang betul adalah Majlis Agama Islam Wilayah Persekutuan.

Diputuskan, membenarkan bantahan permulaan:

Perkataan 'Majlis' di bawah Akta tersebut merujuk kepada Majlis Agama Islam Wilayah Persekutuan disebabkan s 5 Enakmen Pentadbiran Undang-Undang Islam Selangor 1952. Oleh itu, bantahan permulaan dibenarkan (lihat ms 505H–I dan 506A–B).]

Notes

For a case on apostasy, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) para 332.

Cases referred to

Md Hakim Lee v Majlis Agama Islam Wilayah Persekutuan, Kuala Lumpur [1998] 1 MLJ 681 (refd)

Mohamed Habibullah bin Mahmood v Faridah bte Dato Talib [1992] 2 MLJ 793 (refd)

Soon Singh a/l Bikar Singh v Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor [1999] 1 MLJ 489 (refd)

Legislation referred to

Administration of Muslim Law Enactment 1952 (Selangor) ss 5, 6, 7, Pt II

Constitution (Amendment) (No 2) Act 1973 s 6(1), (4)

Federal Constitution, Ninth Schedule (Federal List) item 6(e)

Federal Territory (Modification of Administration of Muslim Law Enactment) (Order) 1974

Islamic Family Law (Federal Territory) Act 1984

Appeal from: Originating Summons No R2–24–86 of 1992 (High Court, Kuala Lumpur)

Balwant Singh Sidhu (*Balwant Singh Sidhu & Co*) for the appellant.

Zaiton Zawiyah bte Puteh (*Raja Ahmad Farid bin Raja Mazlan* with her) (Senior Federal Counsel) for the respondent.

Cur Adv Vult

Mohamed Dzaiddin FCJ (delivering the judgment of the court): By consent of the parties, this appeal was heard together with the earlier appeal in *Soon Singh a/l Bikar Singh v Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor* [1999] 1 MLJ 489 as it involved similar point of law on whether the High Court has jurisdiction to hear the plaintiff's application for a declaration that he was no longer a Muslim. The learned judge dismissed the application and adopted the grounds of judgment in *Soon Singh*. Hence, this appeal.

At the outset, Dato' Zaitun Zawiyah raised a preliminary objection that the respondent was not a proper party to the appeal. She submitted that under the Islamic Family Law (Federal Territory) Act 1984 (Act 303) the proper party should be Majlis Agama Islam Wilayah Persekutuan. We agree with her submission. Under Act 303, 'Majlis' refers to Majlis Agama Islam Wilayah Persekutuan under s 5 of the Administration of Muslim Law Enactment 1952 of Selangor, as modified by the Federal Territory (Modification of Administration of Muslim Law Enactment) (Order) 1974 made pursuant to s 6(4) of the Constitution (Amendment) (No 2) Act 1973 and in force in the Federal Territory by virtue of s 6(1) of that Act. Part II of the Enactment 1952 of Selangor deals with the constitution, powers and

obligations of the Majlis. Section 6 states that the Majlis shall be a body corporate having a perpetual succession and a corporate seal and s 7 says the Majlis may sue and be sued in its corporate name.

In the above circumstances, we uphold the preliminary objection.

On the issue of jurisdiction, En Balwant, for the appellant, adopted his earlier arguments in *Soon Singh*'s appeal. Dato' Zaitun Zawiyah, in reply relied on *Md Hakim Lee v Majlis Agama Islam Wilayah Persekutuan, Kuala Lumpur* [1998] 1 MLJ 681. She also referred us to *Mohamed Habibullah bin Mahmood v Faridah bte Dato Talib* [1992] 2 MLJ 793, which considered s 5 of Act 303. The section states:

> If for the purposes of this Act any question arises as to whether a person is a Muslim, that question shall be decided according to the criterion of general reputation, without making any attempt to question the faith, beliefs, conduct, behaviour, character, acts, or omissions of that person.

We note that in *Mohamed Habibullah* (at p 815), Mohd Azmi SCJ applied the above s 5 (on the test of general reputation) in determining whether Faridah had ceased to be a Muslim. His Lordship found no evidence except the statutory declaration sworn before a commissioner for oath to suggest that Faridah had effectively renounced her Islamic faith and thereby committed apostasy. The Supreme Court was therefore not satisfied that Faridah was not a Muslim or apostate at any material time. In the instant appeal, we do not think it necessary to consider or invoke s 5 of Act 303.

Therefore, except for the fact that the jurisdiction of the Syariah Court Wilayah Persekutuan is conferred by the Administration of Islamic Law (Federal Territories) Act 1993 following item 6(e) of the Federal List to the Ninth Schedule to the Constitution, in our judgment, for reasons stated in *Soon Singh*'s appeal, this appeal is dismissed with costs. Deposit to the respondent to account of taxed costs.

Preliminary objection allowed; appeal dismissed with costs

Reported by Andrew Christopher Simon